

Senator Dillard, chairman of the Committee on Printing, submitted the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Printing, to whom was referred the consideration of House bill No. 85, entitled "An act directing the publication of the expenditures, assets and indebtedness of the several counties," beg leave to report that they have carefully investigated the same, and recommend that it do pass.

J. E. DILLARD, Chairman.

On motion of Senator Dillard, the rules were suspended and the bill read second time; rules further suspended, read third time and passed.

On motion of Senator Tracy, the Senate then adjourned to 10 o'clock A. M. to-morrow.

SENATE CHAMBER,)
AUSTIN, TEXAS, March 6, 1873.)

Senate met pursuant to adjournment. Roll called; quorum present. Prayer by the chaplain.

The journal of yesterday was read and adopted.

Senator Baker presented a petition from the citizens of Caldwell county, protesting against the passage of a hog law. Read and referred to the Committee on Stock and Stock Raising.

Senator Dohoney presented a memorial of the members of the State Council, representing two hundred and eighty subordinate councils of the Friends of Temperance in Texas, praying for the enactment of a law restraining the evils resulting from the use of intoxicating liquors. Read and referred to the Committee on Judiciary No. 1.

The following message was received from his Excellency the Governor:

EXECUTIVE OFFICE, STATE OF TEXAS,)
AUSTIN, March 6, 1873.)

Hon. E. B. Pickett, President of the Senate of the State of Texas:

SIR: I have to return to the Senate, where it originated, the act entitled "An act conferring the right of suffrage upon such foreign born residents as may have

heretofore declared, or may hereafter declare their intention to become citizens before the clerks of the district courts of the several counties in vacation."

I think that on reflection it will be apparent that the purpose of this act, even if expedient, is beyond the limit of the legislative powers. In the very title it assumes to "confer" the right of suffrage, a right which the Constitution of the State confers and which that instrument nowhere permits the Legislature to add to or take from. Under the Constitution, if persons who have declared, or may hereafter declare, before a district clerk, their intention to become citizens, are thereupon entitled to register and vote, this act can in no way strengthen that right; and on the other hand, if by the Constitution they do not have such right, the Legislature cannot give it. Further, this act, if viewed merely as a legislative construction, is, at the best, a nullity, because for the construction or definition of rights dependent on the Constitution, we must alone look to the judiciary.

Beyond the objection stated, the act also seems to conflict with the spirit and letter of all the recent laws of the United States Congress passed to prevent fraudulent acquisition of naturalization papers, for the purpose of voting. In this regard I more particularly ask the houses to refer to sections three and four of the act of Congress of July 14, 1870, and section twenty-nine of the act of June 7, 1872. The latter act even excludes seamen who have served three years in the mercantile navy, unless their declaration of intention is made in open court.

But, if the Legislature had power, would it, as a question of expediency, be advisable to pass this act? No record is to be kept by the clerk of his proceedings. He may even travel through the country distributing this privilege to his friends. Some strange doings of that sort have been reported. On the Rio Grande, where the facilities of crossing the line are easy, half the males living near our border in Mexico might "declare their intention," and thereon exercise the privilege of voting in Texas with impunity. In fact, just previous to the recent election, as I am informed, the clerk of one of the Rio Grande counties (Webb) received in vacation the declarations of some two hundred persons, and they voted at that election. By this time probably most of them have returned to Mexico.

It is certainly liberal enough to allow strangers the

highest privileges of freemen after one year's residence, and it is no hardship to require him to present himself in open court, there, with some little solemnity, to make his declaration before the officers of the court and spectators, and have a due record made of the act. If he feels too little interest in the matter to put himself to that trouble, it is not likely that he will be a desirable acquisition to the voting class.

Very respectfully,

EDMUND J. DAVIS, Governor.

Senator Tendick moved that the message be referred to a select committee. The motion was adopted, and the President appointed the following committee, viz: Senators Tendick, Finlay and Henry.

A message was received from the House informing the Senate that the House had passed Senate bill No. 33, "An act amendatory of and supplemental to an act entitled an act amendatory of and supplemental to an act entitled an act to incorporate the Sabine and Galveston Bay Railroad and Lumber Company, passed September 1, 1856, passed December 24, 1859, which act changed the name of said company to the Texas and New Orleans Railroad Company," with an amendment by the House.

Senator Franks presented the following petition :

To the Honorable Senate of the State of Texas :

The petition of the undersigned respectfully shows unto your honorable body that he is and has been present in the city of Austin, and for the last three weeks has been ready to respond to the charges which have been presented before you against him, and ready to have brought before the committee, to which said charges have been referred, all the witnesses which there may be in the case.

Your petitioner, however, states that while he has been so ready to proceed with the investigation of the matters alleged, he feels that he has suffered at the hands of the committee a grievous wrong, of which he now complains ; and he appeals from the action of the committee to your honorable body for a redress of the grievance.

Your petitioner considers that in the investigation of the charges preferred against him, it was clearly the intention of your honorable body, as expressed in the resolution creating said committee in the Senate, as also that of the House of Representatives, to which resolutions he

now refers, to require said committee to bring before them for examination all the witnesses that might be needed, and have brought all necessary papers.

In violation, as he considers, of this clearly expressed intention on the part of the Legislature, this committee has passed a resolution refusing to bring witnesses who reside and are out of the county of Travis before them, either for examination themselves, or for cross-examination by your petitioner, unless a majority of the committee, for what seems to them good and sufficient reasons, determine to have the witness brought to the capitol; and in lieu of such examination they propose substituting depositions of witnesses taken, as in civil cases, before notaries public, in the absence of your petitioner, and without the opportunity of cross-examination, except by cross-interrogatories. Your petitioner considers this action of the committee clearly in violation of his rights, of being confronted with the witnesses against him, and of having present the witnesses in his favor.

Attention is also called to the fact that there is no law to compel the attendance of a single witness before any notary public anywhere, in such a case.

Petitioner further complains of the action of said committee in adopting the rules of law in taking evidence in the district court in civil actions, this being more of the nature of a criminal prosecution, and in their limiting him to two witnesses on each point or fact; all of which will more fully appear from the copy of the resolutions adopted by said committee attached hereto.

In addition to this right which he claims by virtue of the action of each house separately, and of the Constitution and laws of the land, your petitioner further calls attention to the fact, that in a proceeding such as is now instituted against him, the examination before the committee as contemplated by the action of both houses takes the place of an open trial in the Senate of an impeachment case, and the question for your honorable body to consider is, whether in a trial upon articles of impeachment against a party you would have authority to act, upon depositions taken miles away from the Capitol, in the absence of the party sought to be impeached, or whether it would not be the right of the defendant to be confronted with the witnesses against him, and to have compulsory process to secure the attendance of his own

witnesses. Your petitioner does not seek to secure the attendance of a single witness that he does not deem absolutely necessary for the elucidation of the truth, and the whole truth, in the matter under investigation. He would gladly avoid all unnecessary expense to the State, but he considers it unfair and unjust to deprive him of the right of cross-examination before the committee of the witnesses against him, and he now appeals to your honorable body to prevent this, as he believes, flagrant violation of his rights, by requiring said committee to proceed to summon, and have brought before them in person, except so far as your petitioner may waive his rights, the witnesses both for and against him, and that your body will take such action as will prevent the injustice complained of.

Your petitioner further asks that this petition be considered as a protest against the action of the committee referred to above, as well as a petition for a redress of the grievances of which he complains, and, as in duty bound, will ever pray.

T. C. BARDEN,

Judge Sixteenth Judicial District, Texas.

AUSTIN, March 5, 1873.

Copy of resolutions adopted by the Joint Committee of the Legislature on the fourth day of March, A. D. 1873, to govern its action in the taking of testimony in the investigation of the case of Judge T. C. Barden, of the Sixteenth Judicial District.

Resolved, That the rules of law governing the district courts of this State in the trial of civil causes, in so far as they relate to the manner and form of taking depositions, except as to the issuance of commissions, be adopted as the rule of proceeding governing this committee.

Resolved, If in any case the committee shall desire to procure the personal attendance of any witness residing outside of Travis county, such witness may be summoned to attend by the chairman on the vote of a majority of the committee, a quorum being present.

Resolved, If the respondent shall desire the personal attendance of any witness residing outside of Travis county, and shall make known to the committee such desire, together with his reasons therefor, the chairman

shall, on a vote of a majority of the committee in session, issue a summons for the personal attendance of such witness; *provided*, that not more than two witnesses to the same fact shall be so summoned for either the committee or respondent.

I hereby certify that the foregoing is a correct copy of the original resolutions of the committee, and adopted by them in full meeting.

Witness my hand, this March 5, 1873.

HENRY C. KING,

Chairman Committee.

Senator Franks offered the following resolution, which was read, and on motion of Senator Flanagan was laid on the table :

Resolved, That the committee appointed by the Senate to act in conjunction with a like committee from the House of Representatives, to investigate the charges preferred against the Hon. T. C. Barden, Judge of the Sixteenth Judicial District, be directed to summon in person and have brought before them, all witnesses and papers which may be necessary in such investigation, and that Judge Barden have the right to cross-examine before the committee all witnesses against him, and to have brought before the committee all the witnesses and papers which he may deem necessary to disprove the charges.

Senator Latimer, chairman of Committee on Roads, Bridges and Ferries, submitted the following report :

Hon. E. B. Pickett, President of the Senate :

SIR: Your Committee on Roads, Bridges and Ferries, to whom was referred House bill No. 269, "An act to authorize Howard Keys and his associates to construct a toll bridge across the Sabine river at Crockett's Bluff," have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass.

H. R. LATIMER, Chairman.

Senator Swift, chairman of the Committee on Claims and Accounts, submitted the following report :

Hon. E. B. Pickett, President of the Senate :

SIR: Your Committee on Claims and Accounts, to whom was referred the claim of Harry Hawkins for services rendered by order of the Senate of the Twelfth Legislature, during the funeral of the Hon. Amos Clark, find said claim legitimate and just, and therefore report the adoption of the following resolution :

Resolved, That Harry Hawkins be and is hereby allowed the sum of five dollars, paid from the contingent expenses of the Senate, for services duly and legally rendered.

W. H. SWIFT, Chairman.

Senator Ball, chairman of the joint committee on the part of the Senate, submitted the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: The undersigned joint committee of the Senate and House of Representatives, to whom was referred Senate bill No. 119, entitled "An act authorizing the Commissioner of the General Land Office to employ additional clerks and draughtsmen," having carefully examined the same, instruct us to report it back, with the recommendation that it do pass, with the accompanying amendments.

A. J. BALL,

Chairman Senate Committee.

S. POWERS,

Chairman House Committee.

Amend by inserting in section first, line four, after figure five (5) the word "additional;" and also after figures ten (10) in line five, same word ("additional"). And amend the same section by adding after the last word in section, "that said commissioner shall discharge said clerks and draughtsmen whenever he may think their services not any longer needed in said office."

Senator Avinger, chairman of Committee on Counties and County Boundaries, submitted the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Counties and County Boundaries, to whom was referred House bill No. 77, a bill to be entitled "An act permanently establishing the county seat of Kinney county," have considered the same, and instruct me to report it back and recommend its passage.

H. J. AVINGER, Chairman.

On motion of Senator Fountain, the rules were suspended and the bill read second time; rules further suspended, read third time and passed.

Senator Finlay, chairman of Committee on Judiciary No. 2, submitted the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Judiciary No. 2, to whom was referred Senate bill No. 136, to be entitled "An act to amend article seven hundred and sixty-six of the Penal

Code," having carefully considered the same, I am instructed to report back to the Senate the accompanying substitute and recommend its passage.

GEO. P. FINLAY, Chairman.

Senator Latimer, chairman of the Committee on Roads, Bridges and Ferries, submitted the following report:

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Roads, Bridges and Ferries, to whom was referred House bill No. 127, "An act to authorize Isaac Franklin to erect a pontoon bridge over the San Antonio river, in the county of Goliad," have carefully considered the same, and I am instructed by the committee to report it back to the Senate and recommend its passage.

H. R. LATIMER, Chairman.

On motion of Senator Finlay, the rules were suspended and the bill read second time; rules further suspended, read third time and passed by the following two-thirds vote:

Yeas—Senators Avinger, Baker, Ball, Broughton, Cole, Dillard, Dohoney, Ford, Finlay, Fountain, Franks, Gaines, Hall, Henry, King, Latimer, Rawson, Randle, Ruby, Saylor, Sayers, Shelley, Swift, Tendick, Word and Mr. President—25.

Senator Henry, chairman of Judiciary Committee No. 1, submitted the following reports:

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Judiciary No. 1, to whom was referred House bill No. 116, entitled "An act to amend the first section of an act entitled an act to amend the first section of an act to regulate proceedings in the district courts, approved May 13, 1846, approved December 10, 1863," having carefully examined the same, ask leave to report it back to the Senate and recommend its passage with the accompanying amendments.

JOHN L. HENRY, Chairman.

Section one, line five, amend by striking out the word "wherein" and inserting the words "in which."

Same section, line eight, strike out the word "wherein" and insert the word "where."

Same section, line thirteen, strike out the word "wherein" and insert the words "in which."

Same section, line fourteen, strike out the word "wherein" and insert the word "where."

Same section, line seventeen, strike out the word "wherein" and insert the word "where."

Same section, line twenty-four, strike out the word "wherein" and insert the word "where."

Same section, line thirty, strike out the word "wherein" and insert the word "where."

Same section, line thirty-three, strike out the word "wherein" and insert the word "where."

Same section, line forty, strike out the word "wherein" and insert the word "where."

Same section, line forty-two, strike out the word "wherein" and insert the words "in the county where."

Same section, line fifty-nine, amend by striking out the word "and."

Same section, line sixty, strike out the word "in" before the word "such," and the word "case," after the word "such."

Same section, line seventy, strike out all after the word "company," and insert the following: "And all process against any person, or association of persons, engaged in the business of common carrier, and sued as such, may be served on any agent of such common carrier."

Hon. E. B. Pickett, President of the Senate:

SIR: Your Committee on Judiciary No. 1, to whom was referred House bill No. 97, entitled "An act entitled an act to regulate the conduct of public officers," having carefully considered the same, instruct me to report it back and recommend its passage, with the accompanying amendments.

JOHN L. HENRY, Chairman.

Amend the caption so as to read, "A bill to be entitled an act to regulate the conduct of public officers in certain cases."

Section one, line two, amend by inserting the words "district attorneys" before the word "sheriffs." Same section, amend by striking out all after the word "charge" in line nine.

Section two, amend by inserting the words "district attorneys" after the words "that all," in line one. Same section, line two, strike out the word "persons" and insert the word "officers." Same section, line four, strike out the word "to" after the word "State" and insert the word "shall."

Senator Sayers offered the following resolutions:

1. *Resolved*, That the Committee on Finance are instructed to ascertain the amount and character of the liabilities of the State of Texas as recognized by law, on the first day of January, 1870; and also the amount and character of liabilities, of whatever kind, that have been incurred by the State of Texas since the first day of January, 1870, to present date.

2. *Resolved*, That said committee shall also ascertain the amount and character of funds and other assets of whatever kind, in the possession of and belonging to the State on the first day of January, 1870; and also the amount and character of funds and assets, of whatever kind, that have come into the hands of the State Treasurer, or of any other State officer, from whatever source, since the first day of January, 1870.

3. *Resolved*, That said committee shall also ascertain the amount of moneys that have been paid out by the State Treasurer, and upon what account, since the first day of January, 1870.

4. *Resolved*, That said committee shall report the results of their investigation under this resolution at as early a day as practicable.

Senator Fountain offered the following amendment: "And that said committee are hereby authorized to employ as many clerks and accountants as may be necessary." Adopted.

The resolution, as amended, was then adopted.

Senator Evans introduced a bill to be entitled "An act to incorporate the Dallas Real Estate and Building Association." Read first time and referred to the Committee on State Affairs.

Senator Henry introduced a bill to be entitled "An act to amend an act entitled an act for the relief of the Eastern Texas Railroad Company, passed March 26, 1871." Read first time and referred to Committee on Internal Improvements

Senator Shelley introduced a bill to be entitled "An act to amend an act entitled an act to adopt and establish a penal code for the State of Texas, approved August 26, 1856." Read first time and referred to Judiciary Committee No. 1.

On motion of Senator Shelley, the rules were suspended and Senate bill No. 18, "An act to incorporate the city of Austin," together with a report from the Committee on

State Affairs recommending amendments, was taken up and the first, second, third and fourth amendments were adopted.

The fifth amendment was withdrawn by the committee.

Senator Shelley moved to lay the sixth amendment on the table. Lost by the following vote:

Yeas—Senators Ball, Cole, Dohoney, Evans, King, Latimer, Sayers, Shelley, Swift, and Word—10.

Nays—Senators Avinger, Baker, Ford, Finlay, Flanagan, Fountain, Franks, Gaines, Hall, Rawson, Randle, Ruby, Saylor and Tendick—14.

Senator Shelley proposed to fill up the blank caused by striking out the words, "and in all civil cases when the person sued resides at the time of bringing the suit within the city limits," by the words, "and shall be authorized to solemnize the rights of matrimony."

And so amended, the committee amendments were adopted and bill ordered engrossed; rules suspended, bill read third time and passed.

Senate bill No. 100, "An act to provide for the merger of the Waco and Northwestern Railroad Company, with its properties, rights, etc., in the Houston and Texas Central Railway," was read second time and ordered engrossed; rules suspended, read third time and passed.

Senate bill No. 117, "An act requiring sheriffs to make deeds of conveyance for lands sold for taxes," was read second time and referred to the Committee on Finance.

Senator Dohoney in the chair.

Senator King introduced a bill to be entitled, "An act to provide for the frontier defense, and for the organization of a regiment of cavalry for that purpose." Read first time and referred to the committee on Indian Affairs.

Senator Ruby moved a suspension of the rules to take up House bill No. 185, "An act defining the duties of the Comptroller." Carried.

Bill read first time.

Senator Fountain moved that the bill be indefinitely postponed.

Senator Pickett moved to refer the bill to Judiciary Committee No. 1. Lost.

Senator Dillard moved a call of the Senate. Call ordered.

Absent—Senators Latimer, Pyle and Broughton.

On motion of Senator Broughton, Senate adjourned to 10 o'clock A. M. to-morrow.